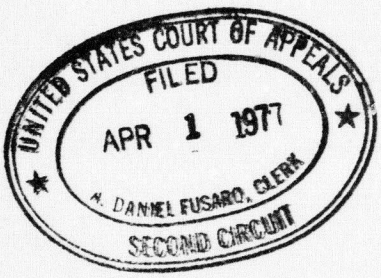
United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

77-6032



United States Court of Appeals

FOR THE SECOND CIRCUIT

NO. 77-6032

GWENDOLYN D. KING and NELLIE AVERY,
Plaintiffs-Appellees

vs.

HOUSING AUTHORITY OF THE CITY OF HARTFORD,
Defendant-Appellant

and J. CHARLES MOKRISKI, individually and in his capacity as Chairman of the Board of Commissioners of the Housing Authority of the City of Hartford, LIONEL DE JESUS, individually and in his capacity as Vice-Chairman of the Board of Commissioners of the Housing Authority of the City of Hartford, REV. CYRIL C. BURKE, individually and in his capacity as Treasurer of the Board of Commissioners of the Housing Authority of the City of Hartford, ALBERT E. COTTER, individually and in his capacity as Assistant Treasurer of the Housing Authority of the City of Hartford, ARTHUR L. ALSTON, individually and in his capacity as Assistant Treasurer of the Housing Authority of the City of Hartford, DANIEL LYONS, individually and in his capacity as Executive Director of the Housing Authority of the City of Hartford, and CARLA HILLS, individually and in her capacity as Secretary of the U. S. Department of Housing and Urban Development,

Defendants

B 2/5

APPEAL FROM UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

BRIEF FOR APPELLANT

MORRIS APTER, ESQ.
ARNOLD E. BUCHMAN, ESQ.
101 PEARL STREET
HARTFORD, CONNECTICUT 06103
Attorneys for Appellant

TABLE OF CONTENTS

Page

TABLE OF CASES, STATUTES, REPORTS AND REGULATIONS ii

THE ISSUES PRESENTED FOR REVIEW 1

PRELIMINARY STATEMENT 1

STATEMENT OF THE CASE 2

STATEMENT OF THE FACTS 3

SUMMARY OF ARGUMENT 8

ARGUMENT

The District Court Abused its Discretion in Granting the Preliminary Injunction 10

Congress Intends That HUD Low-Income Housing Regulations Promote Expeditious Collection of Rent and Eviction for Nonpayment ... 11

When Superimposed Upon HHA's Established Procedures, the HUD Regulations Impede Rent Collections and Eviction for Nonpayment 14

An Administrative Regulation Which Impedes A Congressional Purpose Is Not Binding 18

What Process is Due Nonpaying Tenants Depends Upon the Circumstances Involved 19

Escalera, Based on Subjective Reasons For Eviction, Is Not Controlling 20

The Supreme Court Has Recognized The Uniqueness of Eviction Law 24

Plaintiffs Are Not Denied Due Process By HHA Nonpayment Procedures 25

CONCLUSION 27

TABLE OF CASES, STATUTES, REPORTS AND REGULATIONS

Cases Cited:	Page
Associated Industries of N.Y.S. v. U. S. Dept. of Labor 487 F 2d 342 (2nd Cir., 1973)	18
Brown v. Housing Authority of the City of Milwaukee 471 F 2d 63 (7th Cir., 1972)	28
Brown & Williamson Tobacco Co. v. Engman 527 F 2d 1115 (2nd Cir., 1975)	10
Cafeteria & Restaurant Workers v. McElroy 367 U.S. 886 (1961)	27
Cortright v. Resor 447 F 2d 245 (2nd Cir., 1971)	10
Crow v. Calif. Dept. of Human Resources 490 F 2d 580 (9th Cir., 1973)	29
Dixon v. U.S. 381 U.S. 68 (1964)	18
Ernst & Ernst v. Hochfelder 425 U.S. 185 (1976)	18, 31
Escalera v. New York City Housing Authority 425 F 2d 853 (2nd Cir., 1970)	19, 20, 21, 22, 23, 24, 25, 26, 29
Findrilakis v. HUD 357 F. Supp. 547 (N.D. Calif., 1973)	19
Geneva Towers Tenants Org. v. Fed. Mtg. Investors 504 F 2d 483 (9th Cir., 1974)	23
Gillespie & Co. v. Weyerhaeuser Co. 553 F 2d 51 (2nd Cir., 1976)	10
Goldberg v. Kelly 397 U.S. 254 (1970)	20
Goss v. Lopez 419 U.S. 565 (1975)	20
Hamilton Watch Co. v. Benrus Watch Co. 206 F 2d 738 (2nd Cir., 1953)	10

	Page
Harlib v. Lynn 511 F 2d 51 (7th Cir., 1975)	23
Housing Authority of the City of Omaha v. U.S. 468 F 2d 1 (8th Cir., 1972)	28
Hudson Tire Mart, Inc. v. Aetna Cas. & Sur. Co. 518 F 2d 671 (2nd Cir., 1975)	11
Kovner v. Dubin 104 Conn. 112 (1926)	15
Lindsey v. Normet 405 U.S. 56 (1972)	17, 24, 25
Madera v. Bd. of Ed. of City of N. Y. 386 F 2d 778, 785 (2nd Cir., 1967)	30
Manhattan General Equip. Co. v. Commissioner 297 U.S. 129 (1935)	18, 19
Mayron's Bake Shop, Inc. v. Arrow Stores, Inc. 149 Conn. 149 (1961)	15
Mitchell v. W. T. Grant Co. 416 U.S. 600 (1973)	20
Morrissey v. Brewer 408 U.S. 471 (1972)	19
Mullane v. Central Hanover Trust Co. 339 U.S. 306 (1950)	20
Owens v. Housing Authority of the City of Stamford 394 F. Supp. 1267 (D.C. Conn. 1975)	23
Pander v. French 3 Conn. Cir. 383 (1965)	6
Sims v. Greene 161 F 2d 87 (3rd Cir., 1947)	10
Thorpe v. Housing Authority of the City of Durham 393 U.S. 268 (1969)	28, 29
U.S. v. Cheramie Bo-Truc #5, Inc. 538 F 2d 696 (5th Cir., 1976)	29
United Steelworkers v. NLRB 390 F 2d 846 (D.C. Cir., 1968)	28

	Page
Statutes Cited:	
28 USC §1291(a)(1)	3
42 USC §1408	27
42 USC §1437	4, 15
42 USC §1437a(1)	4, 12
42 USC §1437a(6)	3
42 USC §1437c	4
42 USC §1437d(c)(4)(B)	1, 5, 12
42 USC §1437g(a)	4, 17
§47a-23 Conn. Gen. Stat. (1958)	6, 15
§47a-26 Conn. Gen. Stat. (1958)	6, 7
§47a-35 Conn. Gen. Stat. (1958)	7
Reports and Regulations Cited:	
H. Report No. 93-1114 93rd Cong. 2nd Sess.	12
H. Report No. 93-1279 93rd Cong. 2nd Sess.; 3 U.S. Code, Cong. and Admin. News (1974) p. 4449	12
S. Report No. 93-693 93rd Cong. 2nd Sess.; 3 U.S. Code, Cong. and Admin. News (1974) p. 4273	12
Hearings, Senate Subcommittee on Housing and Urban Affairs, March 11 and 14, 1975 94th Cong. 1st Sess.	13, 14
24 CFR §450.1 et seq.	24
24 CFR §450.4(c)	24
24 CFR §866.1 et seq. (40 FR 33402)	1, 2
24 CFR §866.4(1)(2)(i)	1, 2, 5, 15

THE ISSUES PRESENTED FOR REVIEW

First: Did the District Court abuse its discretion in granting plaintiffs' motion for a preliminary injunction?

Second: Do Department of Housing and Urban Development regulations at 24 CFR §866.1 et seq. and especially 24 CFR §866.4 (1)(2)(i), when applied to the established rent collection and eviction procedures of the defendant Housing Authority of the City of Hartford, contravene the mandate and intent of the United States Housing Act of 1937 as amended at 42 USC §1437 d(c)(4)(B)?

Third: Do the established rent collection and eviction procedures of the defendant Housing Authority of the City of Hartford afford nonpaying tenants adequate due process?

PRELIMINARY STATEMENT

The Preliminary Injunction appealed from was granted by Honorable T. Emmet Clarie, Chief Judge, United States District Court, District of Connecticut.

STATEMENT OF THE CASE

The District Court ordered defendants to show cause why a preliminary injunction should not issue on plaintiffs' complaint alleging failure of the defendant Housing Authority of the City of Hartford (hereinafter HHA)

to comply with regulations promulgated by the United States Department of Housing and Urban Development (hereinafter HUD) at 24 CFR §866.1 et seq. Plaintiffs content that such failure denies them and other HHA non-rent paying tenants of due process in eviction proceedings. The complaint also named the Secretary of HUD as a defendant for her alleged failure to compel HHA to adhere to the subject regulations. Joint Appendix (hereinafter JA p. 3

On December 27, 1976, the date set for hearing on the show cause order, the defendants (other than the Secretary of HUD) filed their answer which admitted the operative factual allegations of the complaint while asserting that the subject HUD regulations, when applied to HHA's established rent collection and eviction procedures, contravened the 1974 mandate and intent of Congress in amending the United States Housing Act of 1937 to require in low-income housing annual contribution contracts, so-called, with HUD, that public housing agencies comply with regulations "pertaining to ... establishment of satisfactory procedures designed to assure the prompt payment and collection of rents and the prompt processing of evictions in the case of nonpayment of rent ..." 42 USC §1437 d (c)(4)(B). JA p. 33

At the same time, HHA filed a cross-complaint against HUD seeking a judgment declaring the provisions of 24 CFR §866.1 et seq., which require, inter alia, a fourteen day administrative notice of intention to terminate for nonpayment of rent, to be inapplicable to HHA's annual contribution

contract. JA p. 38 [1/]

Following an evidentiary hearing and consideration of briefs, Chief Judge T. Emmet Clarie held that the subject regulations were within the bounds of HUD's rule-making authority, and noted that case law trends suggested that eviction of a public housing tenant without prior administrative hearing viol ted due process. JA p. 42. Accordingly, the court granted plaintiffs' motion and entered a preliminary order enjoining HHA from proceeding further in the state actions against the plaintiffs, and from instituting eviction actions based upon nonpayment of rent against any low-income tenant without first giving such tenant fourteen days prior written notice of its intention to do so. JA p. 47

Defendant HHA appeals from Judge Clarie's ruling and order under the authority of 28 USC §1292 (a)(1).

STATEMENT OF FACTS

HHA is a public housing agency within the meaning of the United States Housing Act of 1937, as amended. See: 42 USC §1437a(6). As such, it owns and operates nine low-income housing projects, containing approximately 3100 apartment units in Hartford, Connecticut. Development or acquisition of low-income projects is financed through obligations issued by the

---

1/ HUD has answered the complaint and cross-complaint and filed a cross-complaint against HHA subsequent to the taking of this appeal.

public housing agency. The principal and interest payable on these obligations is provided by HUD under an annual contributions contract guaranteeing their payment. See: 42 USC §1437 c.

Only debt service on the bonds issued by the local housing agency is guaranteed by HUD in the annual contribution contract. The operating costs of the low-income projects is financed with rent receipts and operating subsidies provided by HUD pursuant to 42 USC §1437 g (a). Payment of these subsidies is guaranteed "subject to the availability of funds". op cit.

Rentals are limited to one-fourth of a family's income as defined by HUD 42 USC §1437 a (1). Over the past two years, the operating subsidy to HHA has been inadequate, when added to rental receipts, to meet necessary costs. JA p. 68. Consequently, nonpayment of rents exacerbates an already critical financial problem.

Although the declared policy of the United States Housing Act of 1937 is "to vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs" (42 USC §1437), Congress has extensively mandated requirements to be included in the annual contribution contracts between HUD and the public housing agencies 42 USC §1437 d. Among these requirements is a provision added by the Title II of the Housing and Community Development Act of 1974 (P.L. 93-383) which requires public housing agencies to "comply with such procedures and requirements as the Secretary [of HUD] may prescribe to assure that sound management practices will be followed in the operation of the project,

including requirements pertaining to - the establishment of satisfactory procedures designed to assure the prompt payment and collection of rents and the prompt processing of evictions in the case of nonpayment of rent ..." 42 USC §1437 d (c)(4)(B).

Thereafter, HUD promulgated regulations governing lease agreements between public housing agencies and their low-income tenants. 40 FR 33402, Aug. 7, 1975. The regulations include a requirement that a tenant be given fourteen days written notice of termination of lease in the case of nonpayment of rent. 24 CFR §866.4 (1)(2)(i). The regulations further require that all disputes concerning the tenant's obligations be resolved in accordance with the public housing agency's grievance procedure.

HHA's lease agreement provides neither the fourteen day written notice of termination nor the availability of its grievance procedure in cases of nonpayment of rent. JA p. 51

Under the provisions of the HHA lease, tenants are given lease terms of one month with automatic successive monthly renewals subsequent to the initial term. The stated monthly rent is due and payable on the first day of each month, with a grace period of ten days within which the rent can be paid without default of the lease being declared. As a matter of practice, HHA tenants are given a grace period of from twelve to nineteen days, the actual number in a given month having been predetermined by use of a calculus in which the payment date for welfare benefits, and notice requirements imposed by Connecticut eviction law are basic factors. JA p. 53

If payment of rent is not received by this predetermined date, a "Termination of Lease" (JA p. 50) is issued.

Service of a "Termination of Lease" is required by Connecticut statute as a prerequisite to the institution of an eviction action based upon nonpayment of rent. §47a-23 Conn. Gen. Stat. (1958). It is a notice, served by a proper officer, which informs the tenant that his lease is being terminated for reason of his nonpayment of rent. The tenant is given five "clear" days in which to vacate his premises, exclusive of the date of service of the notice and of the date specified by the notice for the tenant to vacate. Pander v. French 3 Conn. Cir. 383 (1965).

At any time through the date specified in the notice, the tenant may avoid further proceedings by paying the rent due plus $1.25 which is the officer's fee for service of the termination of lease notice. If, upon the expiration of the five "clear" days, the tenant remains in possession, HHA's attorneys issue a summary process complaint "returnable" to court six days, inclusive, after service upon the tenant. op cit. The tenant is given two days after the "return" day within which to appear in court and defend the action. If he does appear, then pleadings advance at three-day intervals. If there is no appearance, then upon HHA's motion, the court may enter a default against the tenant and judgment in favor of HHA for immediate possession. §47a-26 Conn. Gen. Stat. (1958). If the tenant does appear, the law provides for a rent escrow arrangement to be maintained during the pendency of the court proceedings. In lieu thereof, the statutes provide for an expedited

hearing. §47a-26 Conn. Gen. Stat. (1958). Issuance of an execution on the judgment is stayed for a five-day appeal period running from the date of judgment exclusive of intervening Sundays or legal holidays. §47a-35 Conn. Gen. Stat. (1958).

The plaintiffs are lessees of units in HHA's low-income housing projects. Each failed to pay rent as required by their leases. Consequently, HHA proceeded with the issuance of termination of lease notices and state court eviction proceedings in accordance with the procedures and statutes already described. A judgment for possession based upon plaintiff King's failure to appear was entered by the state court on November 10, 1976. The plaintiff Avery appeared by counsel. Her case remains pending, having been interrupted by the institution of this Federal suit.

At each step of these HHA procedures, and until physical eviction, all nonpayment tenants, including the plaintiffs, are afforded the opportunity to terminate further proceedings by payment of or arrangement for payment of unpaid rent and costs incurred by HHA to that point.

The "Notice of Termination" procedure described is employed by HHA to effectuate prompt payment of rent and, in those cases where payment is neither made nor arranged for, prompt processing of state eviction procedures. Under this system, HHA collects approximately $40,000.00 per month in back rent. JA. 54. This system, which is geared to the time requirements of the state eviction procedures, is based upon HHA's experience that the more money that is owed by a tenant, the less chance there is of

collecting it. The authority, therefore, is prompt in the initiation of the prerequisite steps required by the state statutes so that in the event back rent is not paid or arranged for, HHA can be in a position to evict before it has lost more than two months rent.[2/]

By use of this system, HHA has been able to keep its collection losses in the approximate area of $30,000.00 for each of the past two years. JA p. 55. HHA officials estimate that implementation of the HUD required fourteen day notice will cost the authority an additional $75,000.00 to $100,000.00 annually in collection losses and administrative costs. JA p. 56

SUMMARY OF ARGUMENT

Plaintiffs have not demonstrated either that they will suffer irreparable harm if the preliminary injunction were not granted, or that upon a balance of interests, hardship resulting to them would outweigh harm to HHA. The District Court made no such finding. On the record of this case, such a finding could only be made if, as a matter of law, the subject HUD regulations constitute due process eviction requirements in nonpayment of rent cases to the exclusion of the established HHA rent collection/eviction system.

Success of HHA's rent collection system depends upon utilization

---

[2/] Because of the grace periods and timing required by the state eviction laws, it is virtually impossible for HHA to obtain a judgment for possession with the same calendar month in which default of rent occurs. By the time an execution can be obtained and arrangements by the sheriff completed, an additional three weeks or more have elapsed.

of state law eviction procedures. By prompt implementation of the preliminary steps required by state statute, HHA can position itself to avoid the loss of more than two months rent in those cases where a nonpaying tenant does not either pay past due rent or make satisfactory arrangements to do so.

Superimposition of the HUD fourteen day notice requirement on this system would both delay rent collection and prolong institution of eventual eviction proceedings; and, in so doing, cause substantial losses for this already financially strapped, public authority. Such a result is explicitly contrary to the intent of Congress expressed in its 1974 amendment to the United States Housing Act of 1937. Therefore, as applied to HHA rent collection procedures, the HUD regulation is a nullity. The facial inconsistency between the HUD regulations as applied to HHA's procedures and the Congressional intent evidenced by the United States Housing Act of 1937 as amended in 1974 raises question as to plaintiffs' probability of success on the merits.

HHA concedes that the efficacy of its rent collection system would not excuse a denial of due process to its nonpaying tenants. However, the system does afford tenants adequate notice and a meaningful opportunity to defend against an allegation of nonpayment, all prior to a termination of their right to continue in occupancy. Under this established procedure, HHA's nonpaying tenants are accorded all that due process requires. Thus, these plaintiffs can show no countervailing hardships to the crippling financial damage faced by HHA.

ARGUMENT

The District Court Abused its Discretion in Granting the Preliminary Injunction

In reviewing an order granting a preliminary injunction, the only issue is whether the District Court abused its discretion. Gillespie & Co. v. Weyerhaeuser Co. 553 F 2d 51 (2nd Cir., 1976). This question must be determined by considering whether the plaintiffs have fulfilled the prerequisites to the issuance of a preliminary injunction: have they demonstrated a probability of success on the merits coupled with a showing of irreparable injury if the injunction does not issue? Alternatively, have plaintiffs raised serious questions going to the merits and established that the balance of hardships tips "decidedly" in their favor? Brown & Williamson Tobacco Co. v. Engman 527 F 2d 1115, 1121 (2nd Cir., 1975); see: Hamilton Watch Co. v. Benrus Watch Co. 206 F 2d 738, 740 (2nd Cir., 1953).

A reading of the District Court's Ruling (JA p. 42) indicates that Judge Clarie focused his attention on the legal questions and neither made a finding as to plaintiffs' irreparable harm[3/], nor specifically considered the financial hardships imposed upon HHA by entry of the preliminary injunction.

3/ "To justify the granting of a preliminary injunction there must be a showing of irreparable injury during the pendancy of the action and, of course, a finding of fact to such effect." Sims v. Greene 161 F 2d 87, 89 (3rd Cir., 1947). With respect to these plaintiffs, no such finding of irreparable injury could be made in view of HHA's representation, on the record, that it would take no further eviction action against these plaintiffs pending resolution of this case. JA p. 57 cf. Cortright v. Resor 447 F 2d 245 (2nd Cir., 1971).

By its terms, the prohibition of the injunctive order (JA p. 47) extends beyond these plaintiffs to all low-income tenants of HHA who fail to pay their rent. Thus, plaintiffs, whose opposed motion for class action certification remains pending, achieve virtually all they could hope to obtain by final adjudication, in a preliminary injunction which appears to be predicated upon an anticipated determination of the questions of law involved in the case.

Yet, in view of HHA's severe financial jeopardy threatened by this preliminary injunction, the balance of hardship can be said to tip in plaintiffs' favor only if the HHA procedure for rent collection and eviction are inconsistent with due process requirements. Therefore, plaintiffs' irreparable harm/balance of hardship proof necessary to sustain the granting of this preliminary injunction can be found only if the fourteen day notice required by the subject HUD regulations constitutes due process to the exclusion of the established HHA procedure.

If, however, irrespective of the HUD fourteen day notice requirement, the established rent collection/eviction procedure utilized by HHA accords nonpaying tenants adequate due process, then the hardship resulting to HHA from imposition of the fourteen day requirement far outweights any possible harm to nonpaying tenants. cf. Hudson Tire Mart, Inc. v. Aetna Cas. & Sur. Co. 518 F 2d 671, 673 (2nd Cir., 1975).

Congress Intends That HUD Low-Income Housing Regulations Promote Expeditious Collection of Rent

In amending the United States Housing Act of 1937 (42 USC §1401), Title II of the Housing and Community Development Act of 1974 (P.L. 93-383) introduced the requirement that local housing agencies receiving HUD low-income housing funding "comply with such procedures and requirements as the

Secretary may prescribe to assure that sound management practices will be followed in the operation of satisfactory procedures designed to assure the prompt payment and collection of rents and the prompt processing of evictions in the case of nonpayment of rent." 42 USC §1437d(c)(4)(B). This provision had been contained in the House version of the 1974 housing and community development legislation[4/] and subsequently accepted by the Senate conferees.[5/] The final enactment also included a newly introduced provision requiring a minimum rental as counterpoise to the 25% maximum previously imposed by the so-called Brooke Amendments. 42 USC §1437a(1). The 93rd Congress was concerned with maximizing the rental income of local housing authorities to offset the growing cost in operating subsidies paid out by HUD.[6/] Clearly,

---

[4/] H. Report No. 93-1114 93rd Cong. 2nd Sess.

[5/] H. Report No. 93-1279 93rd Cong. 2nd Sess. S. Report No. 93-693

[6/] H. Report No. 93-1114 p. 23: "Section 204 would reform several aspects of the existing low-rent public housing program with respect to rentals paid by tenants. In the opinion of the committee, these reforms are long overdue.

The committee is greatly disturbed over the widening gap between the revenues received and the costs incurred by local public agencies in administering the public housing program. As a result of this gap, some agencies are on the brink of bankruptcy, while for many others essential property maintenance and tenant services must be indefinitely deferred. The committee believes that the solution is not in merely providing more Federal subsidy dollars for these projects. What is also needed, in conjunction with statutory reform, is a greater assumption of responsibility by local agency management and by the tenants living in the projects ... The Committee also recognizes that efficient management by local housing agency officials is essential to the soundness of the program. Section 205 gives the Secretary of HUD explicit directions to assure that sound management practices will be followed in the operation of a project requiring (1) ... (2) the establishment of satisfactory procedures for the prompt payment of rents and processing of evictions, (3) ..."

the provision for prompt rent collections and evictions was intended to improve collection performance, not hinder it.

This Congressional intent was re-emphasized in hearings held in 1975 by a subcommittee of the Senate Banking, Housing and Urban Affairs Committee.[7/] The subcommittee was looking into the financial condition of local public housing authorities and HUD's proposals for providing operating subsidies. A major concern of the subcommittee was the ways in which local housing authorities could improve their operations and reduce dependence on operating subsidies.[8/]

A starting point for the subcommittee's deliberations was the report to Congress of a review of local housing authority operations done by the General Accounting Office.[9/] While the record of the subcommittee hearing does not contain the GAO report itself, it does have HUD's responses.

Among its several recommendations, GAO suggested that HUD require local housing authorities, as a prerequisite to receiving operating subsidies, to demonstrate that they are effectively carrying out their rent collection procedures. op cit 212.

7/ "Financial Conditions of Local Housing Authorities", Hearings before the Subcommittee on Housing and Urban Affairs, 94th Cong. 1st Sess. March 11 and 14, 1975

8/ Operating subsidies increased from $108 million in fiscal year 1971 to an estimated $525 million for fiscal year 1976. op cit p. 3.

9/ "Local Housing Authorities Can Improve Their Operations and Reduce Dependence on Operating Subsidies" Feb. 11, 1975

In response, HUD noted that a local housing authority's ability to carry out its rent collection procedures was externally constrained by state legal processes "which impede rent collection and eviction actions." HUD went on to tell the subcommittee "that improvement of rent collections is a major aim of HUD's new Target Project Program (TPP). Since the TPP involves selected public housing projects with particularly severe operational problems, it is expected that many of the worst rent collection situations will be addressed through the TPP." op cit 213.

The continuing concern of Congress, the findings of the GAO and the responses of HUD all underscore that the legislative intent of Title II of the Housing and Community Development Act of 1974's management provisions was to improve and facilitate the rent collection and nonpayment eviction performances of local authorities. Unfortunately, HUD's response to the Congressional directive, when applied to HHA, has the diametrically opposite effect.

When Superimposed Upon HHA's Established Procedures, the HUD Regulations Impede Rent Collections and Evictions for Nonpayment

In ostensible implementation of the Congressional directive "to assure prompt payment and collection of rents and the prompt processing of evictions in the case of nonpayment of rent", HUD, in August 1975, published regulations requiring "[t]hat the [local authority] shall give written notice of termination of the lease of (i) 14 days in the case of failure to pay

rent." [10/] 40 FR 33402 (August 7, 1975); 24 CFR §866.4(1)(2)(i).

However, as HUD had noted during the March 1975 Senate hearings, local authorities are subject to the external constraints of state law in processing rent collections and evictions. The "constraint" imposed by Connecticut law is the five day notice requirement in cases of nonpayment of rent found in §47a-23 Conn. Gen. Stat. (1958). That notice is not only prerequisite to institution of actual state court eviction proceedings, but also, conceptually, serves as the re-entry onto the premises previously required by common law to mark a landlord's termination of a leasehold. see: Kovner v. Dubin 104 Conn. 112, 119 (1926). As a result of this conceptual re-entry, Connecticut law deems service of the notice to be the point in time at which the leasehold is terminated. Mayron's Bake Shop, Inc. v. Arrow Stores, Inc. 149 Conn. 149 (1961). Consequently, HUD has construed its regulations to require that the fourteen day notice of HHA's intention to terminate be given prior to service of the state law required notice which conceptually effectuates the termination. JA p. 58. The result is that the rent collection eviction process employed by HHA is delayed for a period of two weeks.

As previously described[11/], HHA's procedure is structured around

---

10/ In situations involving the creation or maintenance of a threat to the health or safety of other tenants or authority employees, the notice is to be of "a reasonable time commensurate with the exigencies of the situation"; in all other cases, thirty days. 24 CFR §866.4(1)(2)(ii) and (iii).

11/ Supra pp. 6-7.

Connecticut eviction law, the requirements of which make it virtually impossible to actually evict a nonpaying tenant in the same calendar month in which the default of rent occurs. As a practical matter, the eviction law time requirements make it difficult if not impossible to actually evict a nonpaying tenant until well into the second month after the rent payment is missed. Delaying the process for an additional two weeks makes it an almost certainty that when a nonpaying tenant is finally evicted, he will be at least three months in arrears.

It is an experiential fact that few if any of the rent dollars owed by a nonpaying tenant when he is evicted are ever recovered. Thus, all other things being equal, superimposition of the HUD fourteen day notice requirement would result in a 50% increase in rent losses. However, all other things do not remain equal. Again, experience demonstrates that the more money owed by a tenant, the less chance that he will be able to pay up arrearages and re-establish his tenancy in good stead.

Thus, quite apart from the costs of implementing and administering the fourteen day notice requirement, the net effect reasonably can be anticipated to be higher average arrearages owed by rent defaulting tenants, diminished chance of a defaulting tenant to re-establish his tenancy in good stead, longer process time in the eviction of nonpaying tenants and larger uncollectible rent losses. These results are exactly contrary to the purposes envisioned by Congress in enacting the prompt collection/prompt eviction provisions of the Housing and Community Development Act of 1974.

In the 1975 Senate hearings, HUD reported that the lease requirements it was then in the process of formulating (and which as later promulgated, included the fourteen day notice provision) "will result in all local housing authorities having a uniform and objective basis for collecting rents."[12] While uniformity in this respect might have some HUD-related managerial purpose[13], it is potentially contrary both to HUD's own observation as to the varying effect of local eviction laws[14], and to the Congressional policy that local public housing agencies are to be vested with the maximum amount of responsibility in the administration of their housing programs consistent with the objectives of the Housing Act of 1937. 42 USC §1437.[15] This potential contrarity becomes actual in the HHA rent collection/eviction situation where collection effectiveness is decreased, not increased, and where eviction proceedings in cases of nonpayment are delayed, not expedited.

In view of the Congressional intent to promote rent collection and eviction, HUD's fourteen day notice rule as applied to HHA is arbitrary and capricious.

---

[12] "Financial Conditions of Local Housing Authorities"; supra 216.

[13] See: 42 USC §1437g, enacted as part of Title II of the Housing and Community Development Act of 1974 directing HUD to establish standards for measuring costs of operation.

[14] The widely differing variations in state landlord-tenant laws was noted by the Supreme Court in Lindsey v. Normet 405 U.S. 56 (1972).

[15] see: footnote 6, supra.

An Administrative Regulation Which Impedes A Congressional Purpose Is Not Binding

"The rulemaking power granted to an administrative agency charged with the administration of a federal statute is not the power to make law. Rather, it is 'the power to adopt regulations to carry into effect the will of Congress as expressed by statute.'" Ernst & Ernst v. Hochfelder 425 U.S. 185, 213 (1976). "A regulation which does not do this, but operates to create a rule out of harmony with the statute, is a mere nullity." Manhattan General Equipment Co. v. Commissioner 297 U.S. 129, 134 (1935); see also: Dixon v. United States 381 U.S. 68, 74 (1964).

Consequently, in establishing that the HUD regulations requiring fourteen day prior notice and extra-judicial grievance proceedings in cases of nonpayment of rent will impede its collections of rent and its processing of evictions for nonpayment, HHA demonstrates that with respect to HHA, the Congressional intent of effectuating prompt collection of rent and prompt processing of eviction proceedings is frustrated rather than promoted. In order to promote the Congressional intent, HUD necessarily must consider the effect which implementation of its regulations would have on the procedures being utilized by HHA; "it must act with a discriminating awareness of the consequences of its action." Associated Industries of N.Y.S., Inc. v. U. S. Dept. of Labor 487 F 2d 342, 354 (2nd Cir., 1973). HUD cannot mechanically impose a standardized lease clause without considering the negative effect, in terms of the Congressionally enunciated policy, on the HHA rent collection procedure.

Whether a regulation is in harmony with the statute it seeks to promote is a question of law for the reviewing court to determine. Findrilakis v. HUD 357 F. Supp. 547, 549 (N. D. Calif., 1973). If the regulation is found to frustrate rather than further the Congressional intent, it is the duty of the court to declare the regulation invalid. Manhattan General Equipment Co. v. Commissioner supra.

What Process is Due Nonpaying Tenants Depends Upon the Circumstances Involved

The harm to be suffered by plaintiffs, and other nonpaying tenants, in the absence of a preliminary injunction arguably would outweigh the irrecoverable financial losses now faced by HHA, if those nonpaying tenants were denied due process of law in the eviction proceedings brought against them. However, such is not the case.

Occupancy in federally financed public housing is a status or right subject to due process protections. Escalera v. New York City Housing Authority 425 F 2d 853 (2nd Cir., 1970). However, "[o]nce it is determined that due process applies, the question remains what process is due." Morrissey v. Brewer 408 U.S. 471, 481 (1972).

Due process has no hard and fast formulation. The amorphous quality of the concept is illustrated by the litany of considerations recently reiterated by the Supreme Court: "The requirements of due process of law 'are not technical, nor is any particular form of procedure necessary.' Due process of law guarantees 'no particular form of procedure; it protects

substantial rights.' The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." Mitchell v. W. T. Grant Co. 416 U.S. 600, 610 (1973) (citations omitted).

If, as indicated by this court in Escalera, public housing occupancy is analogous to a welfare entitlement such as was discussed by the Supreme Court in Goldberg v. Kelly[16/], what are the rights of plaintiffs to be protected in any attempt to evict them because of their nonpayment of rent? Clearly, Goldberg would require that they be afforded a hearing appropriate to the nature of the case before any termination of the benefit of occupancy. Just as clearly, plaintiffs would be entitled to an informed notice of that hearing. Mullane v. Central Hanover Trust Co. 339 U.S. 306, 313 (1950). "The timing and content of the notice ... depend on appropriate accommodation of the competing interests involved." Goss v. Lopez 419 U.S. 565, 579 (1975).

The procedure by which plaintiffs could be dispossessed of their units and thereby denied the benefit of occupancy has already been traced. Recalling that delay in the institution of state eviction proceeding leads to a concommittent delay in rental payment and the corrollary fact that the longer rent remains unpaid the less the chance it will be recovered, it is evident that the notice and plenary hearing provided by the state court procedure is an "appropriate accommodation of the competing interests involved." The due process adequacy of HHA's present procedure is to be measured in terms of

---

16/ 397 U.S. 254 (1970)

what opportunities, if any, are lost to plaintiffs to understand the nature of the nonpayment claim against them, and to present their defenses, if any, to those claims before an impartial decision maker.

Surely, when plaintiffs received the notices of termination required by Connecticut procedure, they were unequivocably aware that nonpayment of rent was the basis of the housing authority claim. Any conceivable uncertainty had to be resolved when they were served with the summary process writ which restated the nonpayment claim and advised them of their right to defend before a state court. Both of these notices were given prior to any right of HHA to dispossess plaintiffs from their units. Before that right arises, plaintiffs had the absolute rights to require HHA to prove the validity of its claim, to interpose defenses, to confront and cross-examine witnesses and to offer evidence and argue their cases.

Escalera, Based on Subjective Reasons for Eviction, is Not Controlling

Judge Clarie read Escalera to stand for the general proposition "that eviction of a public housing tenant without prior administrative hearing violates due process." JA p. 42 However, a close reading of Escalera demonstrates that the reasoning of that decision does not require application of the general proposition to the specific instance of judicially decreed eviction for nonpayment of rent.

Escalera was concerned with the due process adequacy of housing authority eviction procedures used in three types of situations: 1) termination

of tenancy on the ground of non-desirability; 2) termination of tenancy for violation of authority rules and regulations; and 3) assessment of levies for undesirable acts by the tenant.

The court was constrained to find[17/] that the administrative steps taken by the housing authority in determining the validity of accusations in each of these three situations were procedurally deficient under the Due Process Clause. This administrative deficiency was compounded by the fact that the only issue in subsequent state court eviction proceedings was the validity of a prerequisite notice to terminate lease. The underlying basis for the notice, be it undesirability, violation of rules and regulations, or failure to pay levies for undesirable acts, could not be brought before the court in the eviction action.

With respect to each of these categories of termination, the court found that the administrative notice given to the tenant did not fully acquaint tenant with the accusations against him. "The purpose of requiring that notice be given to the tenant before the [administrative] hearing is to insure that the tenant is adequately informed of the nature of the evidence against him so that he can effectively rebut that evidence." Escalera v. New York City Housing

---

17/ Plaintiff's complaint had been dismissed by the District Court at the pleading stage thereby requiring the appellate court to accept the plaintiff's allegations and affidavits as proven. On that basis, the court held that "[c]ertain aspects of the alleged present [housing authority] procedures cannot stand without a convincing showing at trial that the [housing authority] has a compelling need for procedural expedition." Escalera vs. New York City Housing Authority supra 861 (emphasis added)

Authority supra 862. Further, the court found that the tenant was denied an opportunity to confront and cross-examine adverse witnesses at the administrative hearing.

When considered in the context of the New York court eviction procedure where the only issue was the validity of the notice to terminate lease, the due process inadequacies of the prior administrative proceedings become critical since that proceeding determined whether the notice to terminate lease would issue. It was the only stage in the eviction process where underlying factual issues could be challenged by the tenant. Given the implicit subjective nature of issues such as undesirability, rule violations, and undesirable acts, adequate prior notice and opportunity to confront and cross-examine are elementally necessary to insure fairness. However, what may be elemental to insure fairness in the instance of subjective accusations such as undesirability, rule violations and undesirable acts is not necessarily required to determine the validity of the objective allegation that rent remains unpaid.[18/]

18/ A corollary of Escalera is found in Owens v. Housing Authority of the City of Stamford 394 F. Supp. 1267 (D. C. Conn. 1975). In that case, housing authority tenants complained that an abrupt policy change by the authority was made without prior notice to the tenants and without affording them an opportunity to be heard. The new policy reversed the previous "no eviction" policy of the authority which had encouraged tenants to pay rent arrearages in installments without actual physical eviction. op cit 1269. The result was a dramatic increase in eviction.

Again, the issue in Owens did not involve the simple straightforward nonpayment of rent situation which is the subject of this action. It had to do with tenants' due process rights prior to a basic policy change. "While ordinarily tenants have no interest in a leasehold if the rent is not paid, a housing authority cannot unilaterally discontinue a policy upon which tenants have acted in reliance on for a period of years..." op cit 1272.

Recent case law indicates that while there is no due process requirement for a hearing prior to a change in housing authority policy (Harlib v. Lynn 551 F 2d 51 [7th Cir., 1976]), tenants are entitled to prior notice and an opportunity to make written statements. Geneva Towers Tenants Org. v. Fed. Mtg. Investors 504 F 2d 483 (9th Cir., 1974). There is no policy change at issue in the present case. Eviction proceedings instituted against the plaintiffs by reason of their nonpayment of rent were in accord with long-standing, well established policy.

Defendant has no quarrel with the application of Escalera to the Escalera types of evictions which are based upon subjective evaluations and decisions. But Escalera is not concerned with the simple, straightforward, nonpayment of rent situation which is at issue here.

By way of analogy, it is interesting to note that HUD regulations with respect to tenancy terminations for nonpayment in HUD financed projects do not require administrative notice prior to the commencement of notice procedures required by state law. 24 CFR §450.1 et seq. Nonpayment of rent is recognized by these regulations as being a material noncompliance with the lease. Consequently, service of initial termination notices are to be made "in accord with the rental agreement and state law". 24 CFR §450.4(c). This recognition is in accord with the holding in Lindsey v. Normet supra.

The Supreme Court Has Recognized the Uniqueness of Eviction Law

Lindsey involved the due process adequacy of Oregon eviction law in cases based upon nonpayment of rent. In upholding that law, the Supreme Court noted that "unless a judicially supervised mechanism is provided for what would otherwise be swift repossession by the landlord himself, the tenant would be able to deny the landlord the rights of income incident to ownership by refusing to pay rent and by preventing sale or rental to someone else. Many expenses of the landlord continue to accrue whether a tenant pays his rent or not. Speedy adjudication is desirable to prevent subjecting the landlord to undeserved economic loss ..." op cit 72.

The court's opinion in Lindsey is germane to plaintiffs' suggestion that Connecticut's summary process was too summary to accord due process. In construing the Oregon eviction law, the court noted "[i]n those recurring cases where the tenant fails to pay rent ... and the issue in the ensuing litigation is simply whether he has paid ..., we cannot declare that the Oregon statute allows an unduly short time for trial preparation.[19/] Tenants would appear to have as much access to relevant facts as their landlord, and they can be expected to know the terms of their lease, whether they have paid their rent, whether they are in possession of the premises, and whether they have received a proper notice to quit ..." op cit 64. The Connecticut summary process procedure is sufficiently similar to Oregon's eviction law that it cannot be held on its face to be constitutionally inadequate.

Plaintiffs Are Not Denied Due Process By HHA Non-Payment Procedures

The nonpayment situation does not present the type of due process problem found in Escalera v. New York City Housing Authority supra. There, the subjective nature of termination grounds e.g. tenant's "non-desirability",

---

19/ "A landlord may bring an action for possession whenever the tenant has failed to pay rent within 10 days of its due date ... Service of the complaint on the tenant must be not less than two nor more than four days before the trial date ...; a tenant may obtain a two-day continuance, but grant of a longer continuance is conditioned on a tenant's posting security for the payment of any rent which may accrue, if the plaintiff ultimately prevails, during the period of the continuance ... the only issue is whether the allegations of the complaint are true ... The only award which a plaintiff may recover is restitution of possession." Lindsey v. Normet supra 63. Compare §47a-23 et seq. Conn. Gen. Stat. (1958), briefly described herein at page 6 .

rule violations, and assessment of penal "additional charges" militated against the defendant's grievance procedure which did not provide elemental due process. Plaintiffs would cull from Escalera this court's conclusion that "the government cannot deprive a private citizen of his continued tenancy [in public housing] without affording him adequate procedural safeguards" as necessarily applicable to nonpayment situations. However, this is not so.

Allegations of nonpayment present a simple factual issue. The due process purpose of pre-termination notice is to insure that tenant is adequately informed of the nature of the evidence against him so that he can effectively rebut it. Certainly, the HHA "Notice of Termination", specifying "nonpayment" and noting the amount claimed due, gives tenant complete notice of the basis for termination. The issue, if any, is simply whether payment was made. Any defense against this in the nature of either a denial or a confession and avoidance can be fully tried out in the state court action complete with procedural due process safeguards. In the Escalera situation, once the management decision to termination on a "subjective" basis was made, the lease was terminated. The only issue then before the state court was the validity of the notice to terminate under the lease. Determination of "non-desirability", rule violations, or assessment of "penal" charges could not be put in question. Thus, the real basis for termination was never before the court.

However, under the HHA procedure and Connecticut law, where nonpayment is the basis for lease termination, nonpayment is the issue before

the court, subject to all available defenses.[20]

As demonstrated by Escalera, HUD does not hold the exclusive patent on infallible regulations. Yet, plaintiffs appear to argue that because HUD dictates fourteen days prior notice in cases of nonpayment lease terminations, any other procedure, by definition, violates due process. "The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." Cafeteria & Restaurant Workers v. McElroy 367 U.S. 886,895 (1961).

CONCLUSION

The final two paragraphs of Judge Clarie's Memorandum set out his rationale for ordering the preliminary injunction. He first cites HUD's general rule-making power at 42 USC §1408[21] suggesting that defendant neglected to consider this source of rule-making authority. But, obviously,

---

[20] There has been no claim or suggestion by plaintiffs that they, in fact, have paid the rent due HHA. Rather, during the course of the hearing, plaintiffs' counsel hinted that the nonpayment was caused by plaintiffs' lack of funds due to extenuating circumstances. Thus, plaintiffs' interest in enforcement of the HUD regulations would appear to have more to do with the additional time which plaintiffs would thereby gain during which the rent might be paid than in any due process consideration. Due process insures to tenant a meaningful opportunity to adequately defend, by fact or law, against the allegation of nonpayment. It does not entitle tenant to additional grace periods within which to pay overdue rent. Circumstances in possible mitigation, such as lost checks or unusual expenses, are not recognizable defenses in the legal action. Beyond this, the Congressionally expressed interest in rent collection would indicate that the need for prompt payment outweighs possible "mitigating" factors.

[21] "The Authority may from time to time make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act."

this statute is implementive of the Housing Act and not independent of the Act's Congressional mandates.[22/] The District Court's description of this general rule-making authority as empowering HUD to make regulations in furtherance of the Act's purposes adds nothing. In the context of this case, there is only a semantical distinction between the Act's "legislative purpose" and the "Congressional mandate" found in the 1974 amendments.[23/] The purposes evident in Title II of the Housing and Community Development Act of 1974 with respect to rent collections and evictions are as compelling as any other purpose found in the legislation. "Administrative agencies will be required to follow Congressional mandate, whether explicit or ascertainable as inherent in underlying policy." United Steelworkers v. NLRB 390 F 2d 846, 851 (D.C. Cir., 1968) cert. den. 391 U.S. 904.

The second premise which the District Court states for its decision is the case law trend it finds which equates public housing eviction without prior

---

22/ HUD appears to have recognized that 42 USC §1408 was simply the means of implementing 42 USC §1437d when it referred to both of those sections as its authority for promulgation of the regulations at 24 CFR §866.1 et seq. see: 40 FR 33403 August 7, 1975.

23/ The District Court's citation of cases approving similar HUD guidelines ignores the fact that none of the cases were dealing with evictions based upon simple nonpayment of rent issues, and each of the cases was decided prior to the 1974 amendments. This is critically distinguishing since the HUD regulations at issue in Thorpe v. Housing Authority of the City of Durham 393 U.S. 268 (1969), Housing Authority of the City of Omaha v. U.S. 468 F 2d 1 (8th Cir., 1972) and Brown v. Housing Authority of the City of Milwaukee 471 F 2d 63 (7th Cir., 1972) were all justified on the basis of implementing the housing policy of remedying unsafe and unsanitary housing conditions and shortages of decent housing for families of low income. While that general policy remains in the Act as amended, it is now further defined by the express Congressional concern for prompt collection of rent and eviction of nonpayers.

administrative hearing to a denial of due process. But, as Judge Clarie notes, none of the cases cited are precisely on point; none involve evictions based upon simple, unadorned, objectively determinable allegations of nonpayment. Recognition of public housing tenancy as a Constitutionally protected right is not tantamount to concluding that nonpayment evictions require the same, precise procedural safeguards as evictions for subjective reasons.[24/] The type of administrative hearing ordained by Escalera in a subjectively premised eviction is not required where the factual issues are clear cut and even undisputed. cf. Crow v. Calif. Dept. of Human Resources 490 F 2d 580 (9th Cir., 1973) vacated and remanded, 420 U.S. 917; see also: U.S. v. Cheramie Bo-Truc #5, Inc. 538 F 2d 696, 698 (5th Cir., 1976).

In a footnote to his Memoranda, Judge Clarie notes that compared to the notice provisions for other termination reasons, the fourteen day nonpayment requirement is more expeditious and therefore in accord with the Congressional directive. Had HUD provided, instead, that in cases of nonpayment not more than fourteen days notice be given, the Congressional policy would have been promoted. As it is, the HUD regulation has destroyed

---

24/ Unlike the situation described in Thorpe, the nonpayment situation could result in an unrecoverable financial loss which might otherwise be mitigated but for the imposition of the HUD fourteen day notice requirement. supra p. 8; JA p. 56. Thus, in so impairing HHA's rights, HUD's requirement is impairing the value of HHA's annual contributions contract. see: Thorpe v. Housing Authority of the City of Durham supra 280.

the rational accommodation which the HHA collection/eviction procedure had struck between the interests of the lessor and the low-income housing tenant who has failed to pay his rent. In so doing, the already weakened financial condition of HHA is further threatened and its ability to maintain and provide safe, decent housing for the 80% of its low-income tenants who do pay their rent, is attenuated.

By preserving to the state eviction procedure the simple factual issue of nonpayment, the tenant is afforded every procedural safeguard to which an individual is entitled under the Constitution. "The real question is at what point along this chain is the full panoply of due process safeguards to apply. 'The demands of due process do not require a hearing at the initial stage or at any particular point or at more than one point in an administrative proceeding so long as the requisite hearing is held before the final order becomes effective ...'" Madera v. Board of Education of the City of New York 386 F 2d 778, 785 (2nd Cir., 1967) cert. den. 390 U.S. 1028. An eviction becomes effective upon a physical dispossession of occupancy, not at a conceptual point symbolized by a Notice of Termination.

Congress recognizes that nonpayment of rent is a serious violation of a material lease provision. It has evidenced its intention that prompt payment of rent and prompt processing of eviction proceedings be facilitated and encouraged. The HHA procedure has struck a rational accommodation between the respective interests of lessor and the low-income housing tenant who has failed to pay his rent.

HUD should not be permitted to upset HHA's practical, workable and effective accommodation with regulations, the effect of which frustrates a Congressionally dictated goal already achieved by the very accommodation which the regulations threaten. Plaintiffs have shown nothing more than that HHA has failed to adhere to the wording of HUD regulations. HHA has demonstrated the inconsistency between the HUD regulations and the express intent of Congress, if those regulations are applied to HHA. Under cases such as Ernst & Ernst v. Hochfelder supra, the HUD regulations therefore are invalid. Beyond this, HHA has demonstrated the substantial harm it would suffer if the regulations are imposed upon it, while plaintiffs have not and cannot show any harm to themselves. Because of this, HHA maintains that the plaintiffs were not entitled to a preliminary injunction and that the District Court abused its discretion in granting one.

For this reason, the order of the District Court granting a preliminary injunction should be vacated.

Respectfully submitted,

Morris Apter and Arnold E. Buchman
101 Pearl Street
Hartford, Connecticut 06103
Attorneys for Appellant

3-31-77

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

GWENDOLYN D. KING et al,	:	
	:	
Plaintiffs	:	
	:	
vs.	:	DOCKET NO. 77-6032
	:	
HOUSING AUTHORITY OF THE CITY OF HARTFORD et al,	:	
	:	
Defendants	:	

CERTIFICATE OF SERVICE

This is to certify that ten copies of the Joint Appendix and twenty-five copies of Appellant's Brief were mailed, first class mail, postage prepaid, to Clerk, United States Court of Appeals for the Second Circuit, Foley Square, New York, New York; and one copy of the Joint Appendix and two copies of Appellant's Brief were mailed, first class mail, postage prepaid, to Doreen E. Dennis, Attorney for Plaintiffs-Appellees, c/o Neighborhood Legal Services, Inc., 161 Washington Street, Hartford, Connecticut 06106 and to Frank Santoro, Attorney for Defendant Carla Hills, c/o United States Attorney's Office, 270 Orange Street, New Haven, Connecticut 06508, this 29th day of March, 1977.

Arnold E. Buchman

Arnold E. Buchman
Attorney for Housing Authority of the
City of Hartford, Defendant-Appellant
101 Pearl Street
Hartford, Connecticut 06103